

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA

UNITED STATES OF AMERICA )  
 ) Case No. 1:18-cr-91  
v. ) Judge Mattice  
 )  
KENNETH SCHWARTZ )

## ORDER

Before the Court are Defendant's 1<sup>st</sup> Motion to Suppress [Doc. 21] and 2<sup>nd</sup> Motion to Suppress [Doc. 18]. In the 1<sup>st</sup> Motion, Defendant moves to suppress the fruits of the warrantless search of his vehicle following a traffic stop executed by police on June 22, 2018. In the 2<sup>nd</sup> Motion, Defendant moves to suppress the fruits of any search based on a dog "sniff" which was ordered by police as part of the same traffic stop. The Court held an evidentiary hearing on both of Defendant's Motions on January 10, 2019. For the reasons announced by the Court at the conclusion of the evidentiary hearing, and as more fully explained below, both of defendant's Motions will be **DENIED**.

## I. FACTUAL BACKGROUND

On three separate occasions in June 2018, the Defendant, Kenneth "Cowboy" Schwartz, allegedly sold or attempted to sell methamphetamine to a confidential informant and undercover officer. [Doc. 33]. The successful transactions occurred off an

interstate exit in Cleveland, Tennessee and were made under police<sup>1</sup> surveillance, and as a result, the officers were able to identify the make, model, and license plate number of Defendant's vehicle. [Id.]. For two of the arranged sales, Defendant's vehicle was a black Toyota Solara with a Georgia license plate. [Id.].

On June 14, as part of the first sale, Defendant allegedly sold four ounces of methamphetamine to the informant and undercover agent. [Id.]. Although it was the officers that had "ordered" this particular drug and amount from Defendant via phone, they did not know his name other than his alias, "Cowboy." [Id.]. They soon discovered his actual name because once the sale was completed a Tennessee Highway Patrol Officer, Trooper Thomas, located and stopped Defendant's vehicle for allegedly "following [a vehicle] too closely." [Id.]. Trooper Thomas made the stop at the request of the DEA. [Id.]. After Trooper Thomas issued Defendant a warning, he terminated the stop and let Defendant go. [Id.].

Police contacted Defendant six days later to purchase another four ounces of methamphetamine. [Id.]. Defendant again met the buyers at the same location. [Id.]. After the second deal was completed, police tracked Defendant from Cleveland to Georgia, where he lived. [Id.].

Two days later, June 22, 2018, police and Defendant arranged for yet another buy. [Id.]. This time Defendant agreed (or promised) to more than double the amount of drugs and bring with him to sell nine ounces of methamphetamine. [Id.]. As he left his Georgia home the early morning of June 22nd, the police were surveilling him, and they tracked

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<sup>1</sup> The police surveillance was apparently a joint operation orchestrated by the DEA and the Tennessee 10<sup>th</sup> Judicial District Drug Task Force.

his black Toyota north up Interstate 75, as Defendant was heading to Cleveland to complete the third arranged sale. [Id.]. This time, however, he wouldn't make it. [Id.].

Two exits shy from where the drug deal was to go down, an officer from the Tennessee 10<sup>th</sup> Judicial District Drug Task Force, Matt Bales, stopped Defendant's car after observing "three traffic infractions." [Id.]. Defendant was the only person in the vehicle. [Id.]. At some point during the stop, Officer Bales asked for Defendant's consent to search his car. [Id.] Defendant refused, and Bales then had his backup, Bradley County Sheriff's Deputy Ken Ritenour, run his trained drug dog, "Rex," around the car. [Id.]. Rex alerted. [Id.]. A search of Defendant's car soon followed, and the Officer Bales found nine ounces of methamphetamine. [Id.]. Defendant was arrested and his car was impounded. [Id.].

Back at police headquarters, Defendant met with a DEA agent, waived his *Miranda* rights, and confessed that prior to his stop he was headed to Cleveland to sell the nine ounces of methamphetamine that had been found. [Id.]. Defendant also admitted to the two prior sales. [Id.]. This prosecution followed shortly thereafter.

At the January 10 evidentiary hearing, the Government called Rodd Watters, who is a Special Agent with the Tennessee Bureau of Investigation and is currently assigned to the U. S. Drug Enforcement Agency as a Task Force Officer. The Defendant called Matt Bales, an Officer with the Tennessee 10<sup>th</sup> Judicial District Task Force and Ken Ritenour, a Deputy with the Bradley County, Tennessee Sheriff's Department, who currently serves as a canine handler. All three witnesses were involved in various capacities and in various phases of the drug trafficking investigation of the Defendant, and/or participated in one or more of the three above-described traffic stops which were part of that investigation.

All testified as to their involvement in the particulars of the investigation and/or the traffic stops. The Court found all three to be credible witnesses.

## **II. ANALYSIS**

At the conclusion of all testimony at the evidentiary hearing, the following exchange took place:

The Court: Mr. Whittaker [counsel for Mr. Schwartz], would you come to the podium? Let me pose a hypothetical to you. What if on the, I guess it was the afternoon of June 22<sup>nd</sup>, 2018, Agent Bales had done this. When he saw the black Solara pass, he began a pursuit of the defendant, when he caught up with him, stopped him, said, please get out of the car. Took out his handcuffs, put the handcuffs on Mr. Schwartz, and then announced you are under arrest for possession of methamphetamine with intent to distribute. I'm going to put you in my squad car for officer safety. And just announced to Mr. Schwartz, I am now going to search your vehicle based upon suspicion of possession of narcotics, and I'm going to take as long as I want, I'll disassemble the car, if necessary. Would there have been any Fourth Amendment violation under those circumstances?

Mr. Whittaker: I don't think so, Judge.

The Court: You do?

Mr. Whittaker: I don't. I don't think so.

The Court agrees with Defendant's counsel. Whatever problems (if any) there may have been with the three traffic stops involving the Defendant, or with the manner in which those stops were conducted – which seem to be the focus of Defendant's instant motions - any such problems are completely irrelevant to the fact that on June 22, 2018, police had more than adequate probable cause to arrest Mr. Schwartz, and to search his vehicle. Any errors in the traffic stops, or in the manner in which the ensuing search and

seizure was conducted, are entirely extraneous to the issue at hand – whether there was a violation of Mr. Schwartz's Fourth Amendment rights, and whether the fruits of any search should now be suppressed. There has been no such violation, and therefore no evidence retrieved in the search need be suppressed.

### **III. CONCLUSION**

Because there has been no violation of Defendant's Fourth Amendment rights involved in the seizure of the evidence which he now seeks to suppress, Defendant's 1<sup>st</sup> Motion to Suppress [Doc. 21] and 2<sup>nd</sup> Motion to Suppress [Doc. 18] are hereby **DENIED**.

SO ORDERED this 8th day of February, 2019.

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*/s/ Harry S. Mattice, Jr.*  
HARRY S. MATTICE, JR.  
UNITED STATES DISTRICT JUDGE